IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

NO. 71- 1178

THE TEXAS HIGHWAY DEPARTMENT, ET AL.,

Petitioners

VS.

NAMED INDIVIDUALS,

Respondents

AMICUS CURIAE BRIEF OF GREATER SAN ANTONIO CHAMBER OF COMMERCE

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The Greater San Antonio Chamber of Commerce, subject to its Motion for leave to file a brief as Amicus Curiae, files this its Amicus Curiae Brief in support of the Petition for Writ of Certiorari heretofore filed herein by the Texas Highway Department, et al., Petitioners, and would show the Court the following:

INTEREST OF AMICUS CURIAE

The Greater San Antonio Chamber of Commerce is an association of business, professional and civic minded individuals in this city, dedicated to the growth and progress of metropolitan San Antonio. For more than 25 years, the Chamber has maintained an active

Highway Committee, and has actively assisted in the planning, the study, and securing the necessary public and governmental approval for the highway system in and around the City of San Antonio. Following the passage of the Federal-Aid Highway Act in 1956, the Chamber of Commerce assisted in comprehensive origin-destination traffic surveys which resulted in a long-range plan for the area development of an urban freeway system. Through the intervening years, this activity and support has been rendered in cooperation with the City, County, the State Highway Department and the Federal Bureau of Public Roads. The Chamber of Commerce is an active representative of the many business, commercial, professional interests and the motoring public who are adversely affected by the blockage of this project and therefore, join the Texas Highway Department in urging judicial relief from this dilemma.

ARGUMENT FOR GRANTING THE WRIT

A. *The plight of the City and its citizens:*

The "North Expressway" is an integral part of the urban highway system of the City of San Antonio (see Appendix A, page 8). It will be a vital traffic artery from the North Central area to the downtown or inner city of San Antonio. This highway system is the economic life blood of the City, and unlike some other large cities, it serves as the primary means of mass urban transportation. More importantly, the general location and areas served by the North Expressway are the product of over 16 years of study by State, City and Chamber Committees who projected the traffic needs and population growth of the City. Their projections have now proved true, because the proposed North Expressway lies within the corridor of the heavi-

est growth in Bexar County, and the entire northern area of the City shows the heaviest concentration of new residential housing, commercial development and population growth. In addition, the Chamber of Commerce and the City are engaged in a desperate program to revitalize the inner city, to make it habitable and attractive and economically viable. Without question, this expressway fulfills the pressing need for access between the City's area of dynamic growth, the airport and the central city of San Antonio.

When the Federal Court stayed construction of the North Expressway in May, 1971, this represented but another long and costly stalemate of this vital project which now chokes the bloodline of the inner city, disrupts the traffic and safety planning of the city and the Chamber, stifles business development and tourist traffic, and either renders useless or greatly overloads the existing portions of the freeway system. An example is the new 12 million dollar I.H. 37 segment and interchange, opened and dedicated only last month. This one project (see Appendix B, page 9) is the costliest single highway contract in the history of the San Antonio freeway system. As the Appendix map shows, this four level interchange will connect I.H. 37 from the South, I.H. 35 East and West, and the "North Expressway" from the North. All levels of this vast and complicated interchange stand completed: but only 30% is in use, and *seven* different ramps and exits are blocked because of the incomplete North Expressway.

It is this specter of decaying steel and concrete, vast unuseable structures grown up with weeds, wasted millions of tax dollars eaten up by rising costs, and the frantic and unending traffic jams that have united the people of San Antonio. Through their represent-

atives, they cry out for relief from the Federal-State dilemma presented to this Court. Congress never intended this monumental waste of money and resources, this unconscionable delay in the fulfilling of a vital public need, this abuse of the citizen-consumer. After all, with Congress, the Highway Department and the Federal Courts all trying to decide what's best for him, the citizen-taxpayer of San Antonio has been the *real* loser.

B. *The gross distortion of Congressional intent:*

The Court of Appeals in applying the Highway, Transportation and Environmental Acts to the record in this case has stretched them far beyond the meaning and intent of Congress. The language of such Act and prior court decisions have imposed Federal policy and standards only as a condition to the approval of Federal funds for the construction of such projects. And yet the Court of Appeals has sought to enforce these Acts on the basis of Federal supremacy, requiring compliance by the State without regard to the State's withdrawal of its application for Federal funding. Thus, what was spoken of as a "partnership" or a "marriage" between the State and Federal government is really neither, because the court has not accorded equal rank and rights between the parties. The Secretary's approval of the project, although unlawful, was sufficiently lawful to seal off any escape by the State of Texas from compliance with the Federal Standards.

To reach this result, the Appeals Court has applied a rule of "entrapment." Without benefit of Congressional intent or the statement of any compelling reason, the Court has arbitrarily fixed the date of the Secretary's abortive approval of the project as the spring-

ing of the trap. No one knew in August, 1970, that the pursuit of Federal funds was really a one-way street; that the State, when it finally learned the rules of the road, had no power to back up, to turn around or to quit the partnership. But what statutory language requires that the State be impaled in this fashion? We find none. We find no reason for such punishment from the record. Planning, design and routing was determined long before enactment of the "parkland" amendments to the statutes. Good faith negotiation and adjustments were made with federal officials. A favorable ruling of the district court, and denial of stays were issued by both this Court and the Court of Appeals before construction started. It is fair to say that a decision to forego Federal funding was dictated by a desire to complete this project in an expeditious manner, rather than any desire to evade federal law. And after all, the federal law is *not* evaded when Federal money is not used to construct a State Highway project.

C. *The damage to the Federal-State partnership:*

Perhaps more important than the "concrete offspring" lying still-born over the nine-mile stretch in San Antonio, is the bold attempt by the majority of the Court of Appeals to convert a typical Federal-aid statute with policy conditions into a strict regulatory scheme of universal application. The effort to rely upon the supremacy and other such powers as a means of extending Federal controls into essentially state activities has been referred to as "creative federalism" and readily identified as judicial usurpation of power. Note, 50 Texas L. Rev. 381 (1972). In this instance the court below abandoned the contract theory of partnership between federal and state agencies, which is

clearly the statutory scheme,[1] for indeed it held the State bound to a Federal-aid project despite the nonperformance of the Federal partner. Instead, the court substituted a rule of Federal supremacy[2] which overrides the just desires of the State for disengagement. Contrary to the Court's statement that Texas proceeded with its "eyes wide open,"[3] this rule of supremacy was fashioned very late in the litigation—at the same time the Federal administrator's partial and segmented approval was held illegal. Certainly none of these rules were available when Texas committed itself to the project, and such a construction was never espoused by the Federal parties at *any* stage of this litigation.

How then should this Chamber of Commerce, the City or State continue participation in joint highway planning when the long and traditional partnership with the Federal government has been so severely impugned; when Federal approval once ruled legal, but later illegal, becomes a trap for one party to the bargain and an escape for the other? Moreover, there is a multitude of other Federal assistance programs which attach conditions to Federal expenditures, and the extension of this philosophy to all such programs could have a profound and adverse effect upon the states and necessitate a reassessment of their participation.

CONCLUSION

The present impasse in our project is due to, and the "concrete offspring" is a monument to, a severe disruption of the orderly operation of Federal-State

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[1] 23 U.S.C. § 110, et seq.
[2] Op., 446 F.2d at 1027.
[3] Op., 446 F.2d at 1028.

relationships. In this unseemly conflict the people of San Antonio—who are citizens and taxpayers of *each layer of government*—are the casualties and the walking wounded. But the nation *as a whole* also suffers greatly from this malfunction of the respective State and Federal interests, and it therefore warrants the attention of this high Court.

WHEREFORE, Your Amicus Curiae respectfully recommends that Writ of Certiorari be granted and judgment of the Court of Appeals be reversed.

Respectfully submitted,

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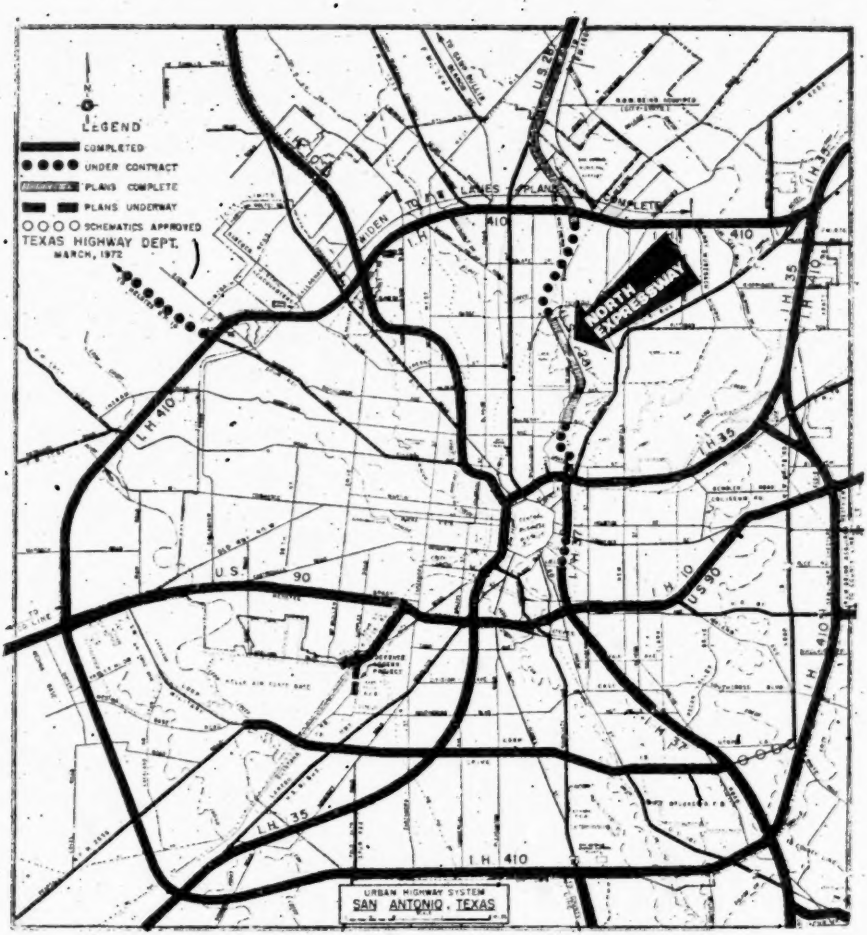
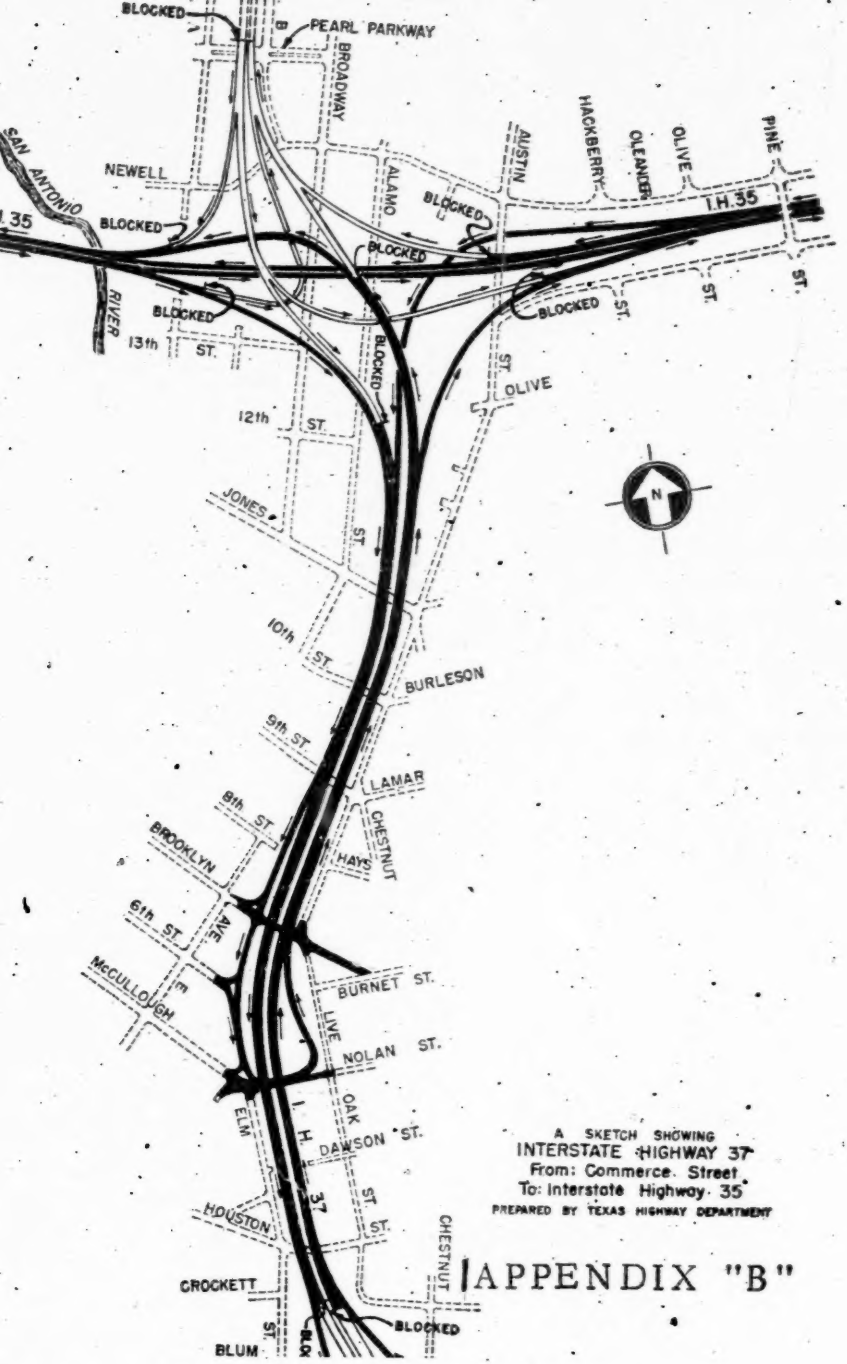
Chamber of Commerce


LEGEND
COMPLETED
UNDER CONTRACT
PLANS COMPLETE
PLANS UNDERWAY
SCHEMATICS APPROVED
TEXAS HIGHWAY DEPT.
MARCH, 1972
I.H. 410
NORTH EXPRESSWAY
I.H. 35
U.S. 90
I.H. 10
U.S. 281
URBAN HIGHWAY SYSTEM
SAN ANTONIO, TEXAS

APPENDIX "A"



A SKETCH SHOWING
INTERSTATE HIGHWAY 37
From: Commerce Street
To: Interstate Highway 35
PREPARED BY TEXAS HIGHWAY DEPARTMENT

APPENDIX "B"